

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 17, 2007

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

CHIEF CLERK'S OFFICE

2007 JUL 17 PM 4:13

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Executive Director's Exceptions to the ALJ's Proposal for Decision
Brandy Carter dba Carter's Cleaners; RN104964564
SOAH Docket No. 582-07-1252; TCEQ Docket No. 2006-0772-DCL-E

Dear Ms. Castañuela:

Enclosed for filing are the originals of the 1) the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and 2) the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision.

Enclosed please also find one copy of this letter to you, one copy of the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision, one copy of the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision, and one copy of the letter to the Respondent. Please file stamp these documents and return them to Robert R. Mosley, Attorney, Litigation Division, MC 175. If you have any questions or comments, please call me at (512) 239-0627.

Sincerely,

A handwritten signature in black ink, appearing to read "R. R. Mosley", with a stylized flourish at the end.

Robert R. Mosley
Attorney
Litigation Division

Enclosures

cc: Ms. Brandy Carter, P.O. Box 816, Luling, Texas 78648
Ms. Libby Hogue, Enforcement Division, TCEQ, MC 219
Mr. Barry Kalda, Waste Section Manager, TCEQ, MC R-11
Mr. Blas Coy, Public Interest Counsel, TCEQ, MC 103

Kathleen Hartnett White, *Chairman*
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July 17, 2007

**Via Interagency Mail, and
Via Facsimile Transmission to: (512) 475-4994**

The Honorable Cassandra Church
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
Austin, Texas 78701

Re: The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and The Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision;
Brandy Carter dba Carter's Cleaners; RN104964564
SOAH Docket No. 582-07-1252; TCEQ Docket No. 2006-0772-DCL-E

To The Honorable Judge Church:

Please find enclosed a copy of 1) the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and 2) the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision. These pleadings are being filed in response to your Proposal for Decision dated on July 2, 2007. If you have any questions or comments, please call me at (512) 239-0627.

Sincerely,

A handwritten signature in black ink, appearing to read "RAM", written over a horizontal line.

Robert R. Mosley
Attorney
Litigation Division

Enclosures

cc: Office of the Chief Clerk, MC 105
Ms. Brandy Carter, P.O. Box 816, Luling, Texas 78648

SOAH DOCKET NO. 582-07-1252
TCEQ DOCKET NO. 2006-0772-DCL-E

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER

VS.

BRANDY CARTER DBA CARTER'S
CLEANERS,
RESPONDENT

BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 JUL 17 PM 4:13
CHIEF CLERK'S OFFICE

THE EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ADMINISTRATIVE LAW
JUDGE'S PROPOSAL FOR DECISION

TO THE HONORABLE JUDGE CHURCH:

COMES NOW the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), represented by the Litigation Division, and files these Exceptions to the Administrative Law Judge's Proposal for Decision. In support thereof, the Executive Director would show the following:

I. PROPOSED ORDER

The Executive Director ("ED") respectfully requests that the ALJ make the following revisions to the Proposed Order:

CONCLUSION OF LAW NO. 3

The Executive Director respectfully requests that the second citation to the Texas Administrative Code be revised to include a reference to 30 TEX. ADMIN. CODE § 1.12. Currently, the citation reads, "..., and 30 TEX. ADMIN. CODE §§ 39.25 and 80.6." The Executive Director requests that the citation be revised to read, "..., and 30 TEX. ADMIN. CODE §§ 1.12, 39.25 and 80.6."

ORDERING PROVISIONS NOS. 5, 6, 7, 8, AND 9

The Executive Director respectfully requests that Ordering Provisions Nos. 5, 6, 7, 8, and 9 be renumbered as Ordering Provisions 3, 4, 5, 6, and 7 respectively to place the numbers in the Ordering Provisions in an uninterrupted sequence.

The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision
SOAH Docket No. 582-07-1252
TCEQ Docket No. 2006-0772-DCL-E
Page 2

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Mary R. Risner, Division Director
Litigation Division

By: 

Robert R. Mosley
State Bar of Texas No. 24002654
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-3400
Fax: (512) 239-3434

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2007, the original and eleven (11) copies of the foregoing "Exceptions to Administrative Law Judge's Proposal for Decision" ("Exceptions") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Exceptions was mailed via Certified Mail, return receipt requested (Article No. 7002 2410 0001 7630 1677), to:

Ms. Brandy Carter
P.O. Box 816
Luling, Texas 78648

I further certify that on this day a true and correct copy of the foregoing Exceptions was hand-delivered, to Blas Coy, Jr., Office of the Public Interest Counsel, Texas Commission on Environmental Quality - MC 103.

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via fax to (512) 475-4994 and mailed via inter agency mail, to:

The Honorable Cassandra Church
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street
P.O. Box 13025
Austin, Texas 78711-3025



Robert R. Mosley
Attorney
Litigation Division
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



ORDER
Assessing an Administrative Penalty
Against
BRANDY CARTER D/B/A
CARTER'S CLEANERS
SOAH DOCKET NO. 582-07-1252
TCEQ DOCKET NO. 2006-0772-DCL-E

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing an administrative penalty against Brandy Carter d/b/a Carter's Cleaners (Respondent). Cassandra J. Church, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on April 17, 2007, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, who appeared on her own behalf, and the Commission's Executive Director (ED), represented by Robert R. Mosley, an attorney in TCEQ's Litigation Division.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Between January 2005 and December 2006, Brandy Carter d/b/a Carter's Cleaners (Respondent) owned and operated a dry cleaning drop station at 500 E. Pierce, Luling, Caldwell County, Texas (the Facility).

2. The Facility was a retail commercial establishment, the primary business of which was to act as a collection point for the drop-off and pick-up of garments or other fabrics sent to a dry cleaning establishment for processing.
3. The Facility was not exempt or excluded from regulation under the Texas Water Code, the Texas Health and Safety Code, or the rules of the Commission.
4. On June 7, 2006, a Commission Field Office investigator determined that Respondent had failed to complete and submit to the Commission the required registration form for a dry cleaning drop station.
5. The deadline for dry cleaning and drop station facilities to complete and submit a registration was September 1, 2005. The Commission extended that deadline to April 26, 2006.
6. On March 24, 2006, the Commission issued a mass mailing to owners of dry cleaning establishments, including drop off stations, advising them of the extension to April 26, 2006.
7. The Commission sent a mailing to Carter's Cleaners on March 24, 2006, but it was not sent to Respondent's then-current business address.
8. The failure to timely register a dry cleaning facility is considered a major programmatic violation on the Commission's penalty matrix, included in the Commission's 2002 Penalty Policy.
9. The period between the September 1, 2005, deadline for registration of a dry cleaning facility and the last day of the extension period, April 26, 2006, comprised 237 days. In mid-2006, the ED assessed a penalty of \$5.00 per day for each day after September 1, 2005, a dry cleaning facility was not registered.
10. Respondent registered the Facility immediately after receiving the Commission's Notice of

Enforcement on June 7, 2006, so made a good faith effort to comply with requirements of the law.

11. Respondent did not have any other enforcement actions against her in the five years preceding the inspection on in June 2006.
12. On September 26, 2006, the ED served the original EDPRP on Respondent, alleging that she had violated TEX. HEALTH & SAFETY CODE ANN. § 347.102 and 30 TEX. ADMIN. CODE § 337.10(a) by failing to register the Facility.
13. The base penalty of \$1,185.00 was calculated as a violation continuing for 237 days, from September 1, 2005, through April 26, 2006, with a \$5.00 penalty assessed for each day of non-compliance.
14. The base penalty was reduced 10 per cent, from \$1,185.00 to \$1,067.00, on the basis of Respondent's good faith effort to comply; no other adjustments to the base penalty were warranted.
15. An administrative penalty of \$1,067.00 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in TEX. WATER CODE ANN. § 7.053 and in the Commission's 2002 Penalty Policy.
16. After receiving the EDPRP containing the proposed penalty, Respondent sought adjustment of the proposed penalty on the basis of financial hardship and submitted financial information, including income tax returns, to the ED for review.
17. In 2006, the ED considered adjustment of a proposed penalty for financial hardship only if the amount of the proposed penalty was \$3,600.00 or above and also exceeded one per cent of a respondent's income. Respondent did not qualify for adjustment of the proposed penalty on the basis of financial hardship.

18. On October 13, 2006, Respondent requested a contested case hearing both on allegations in the EDPRP and on the ED's determination that she did not qualify for consideration of an adjustment of the proposed penalty on the basis of financial hardship.
19. On December 4, 2006, the case was referred to SOAH for a hearing.
20. On December 21, 2006, the Commission's Chief Clerk issued notice of the hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
21. The preliminary hearing set for January 25, 2007, was reset for March 1, 2007. Respondent waived the March 1, 2007, preliminary hearing and the ED established jurisdiction to proceed on agreed evidence.
22. The hearing on the merits was conducted on April 17, 2007, in Austin, Texas, by ALJ Cassandra J. Church. The record closed on May 1, 2007, upon receipt of redacted tax returns from Respondent.
23. Respondent appeared at the hearing on the merits on her own behalf; the ED appeared at the hearing on the merits through his attorney, Robert R. Mosley.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE ANN. §§ 5.013 and 7.002, and TEX. HEALTH & SAFETY CODE ANN. §§ 374.051 and 374.252.
2. Respondent was notified of her alleged violation, the proposed penalty, and of the opportunity to request a hearing on the alleged violations or the penalties, as required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104.

3. Respondent was notified of the hearing on the alleged violations and the proposed penalty, as required by TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TEX. ADMIN. CODE § 155.27, and 30 TEX. ADMIN. CODE §§ 1.12, 39.25 and 80.6.
4. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
5. Respondent, as owner of the Facility at the time the violations occurred, was liable for compliance with all regulations governing the operation of a dry cleaning drop station pursuant to TEX. HEALTH & SAFETY CODE ANN. § 374.102(a) and 30 TEX. ADMIN. CODE § 337.10(a).
6. Respondent violated TEX. HEALTH & SAFETY CODE ANN. § 374.102 and 30 TEX. ADMIN. CODE § 337.10(a) by failing to timely register the dry cleaning drop off station owned and operated by her in Luling, Texas.
7. Based on the above Findings of Fact and Conclusions of Law, an administrative penalty of \$1,067.00 is a reasonable exercise of the Commission's authority under TEX. WATER CODE ANN. §§ 7.051 and 7.052 and takes account of all factors set out in TEX. WATER CODE ANN. § 7.053.
8. Based on the above Findings of Facts and Conclusions of Law, the Commission should assess Respondent an administrative penalty of \$1,067.00.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT:

1. Within 30 days after the effective date of this Commission Order, Respondent shall pay an administrative penalty in the amount of \$1,067.00 for the violations of TEX. HEALTH & SAFETY CODE ANN. § 374.102 and 30 TEX. ADMIN. CODE § 337.10(a).
2. The payment of the administrative penalty herein completely resolves the violation set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Checks rendered to pay the penalty imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Brandy Carter d/b/a Carter's Cleaners, RN 104964564."

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

3. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the ED determines Respondent has not complied with one or more of the terms or conditions of this Order.
4. The Chief Clerk shall provide a copy of this Order to all of the parties.

5. The effective date of this Order is the date the order is final, as provided by TEX. GOV'T. CODE ANN § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.
7. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied for want of merit.

Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kathleen Hartnett White, Chairman
For the Commission